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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-494

RIVCOM CORPORATION,
Petitioner,

v.

AGRICULTURAL LABOR RELATIONS BOARD; AND UNITED FARM WORKERS OF AMERICA, AFL-CIO; RIVERBEND FARMS, INC.; TRIPLE M FARMS, INC.
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Does a petition for certiorary which challenges the issuance by a state supreme court of a temporary and interim stay in conjunction with a proceeding pending before a state court of appeal raise a substantial federal question?

STATEMENT OF THE CASE

A. INTRODUCTION: The Agricultural Labor Relations Act (ALRA)

For decades California has witnessed strife and conflict in its fields and vineyards. Federal labor laws have brought no relief to the California fields because those statutes exempt agricultural employees from their coverage. (29 U.S.C. §§ 152(c), 203(f).)

To bring "certainty and a sense of fair play" to an "unstable and potentially volatile condition," (ALRA Preamble, Cal.Stats. 1975, Third Ex. Sess., ch. 1, § 1) the California Legislature enacted the Agricultural Labor Relations Act of 1975 (hereinafter "ALRA" or the "Act"). (Cal. Lab. Code §§ 1140, et seq.) A comprehensive agricultural labor relations statute, the ALRA establishes a five-member Agricultural Labor Relations Board (hereinafter "ALRB" or "Board") (Cal. Lab. Code § 1141); grants employees organizational rights (Cal. Lab. Code § 1152); provides for secret ballot elections to select a collective bargaining representative or no union (Cal. Lab. Code §§ 1156–1159); and characterizes a variety of acts by employers or unions as unfair labor practices, including interference with employees' rights. (Cal. Lab. Code §§ 1153–1155.7.)

The Act is modeled in some respects on the National Labor Relations Act. Section 1160.3 of the Act (Cal. Lab. Code § 1160.3) provides for issuance by the Board of a decision and order following an administrative adjudication of unfair labor practice complaints filed by the General Counsel. (Cf., 29 U.S.C. § 160(c).) Section 1160.8 (Cal. Lab. Code § 1160.8) provides that any person aggrieved by the final order of the Board may obtain a

review of such order in the court of appeal. The court of appeal wherein a petition for review of a Board decision and order is pending has jurisdiction "to grant to the board such temporary relief or restraining order it deems just and proper." (Cal. Lab. Code § 1160.8; Cf., 29 U.S.C. § 160(f).)

B. The Decision of the ALRB in the Instant Case

On August 17, 1979, respondent issued a decision and order in *Rivcom, Inc. and Riverbend Farms* (1979) 5 ALRB No. 55. That decision found petitioner Rivcom, Inc. to be a successor employer to National Property Management Systems, Inc., and obligated it to bargain with United Farm Workers of America, AFL-CIO (UFW), which had won exclusive representative status in an ALRB election held on May 9, 1978. The Board found that Rivcom's conduct in evicting its employee-tenants violated sections 1153(a) and (c) of the ALRA (Cal. Lab. Code §§ 1153(a), (c)) and, accordingly, ordered Rivcom to cease and desist from attempting to evict or evicting the employees at Rivcom-leased land.

The Board's decision stemmed from charges filed by the UFW against petitioner charging the employer, with, inter alia, attempting to evict worker tenants because of their support for the UFW. The ALRB's General Counsel issued a complaint, and an 18-day hearing was held from March 1 through April 13, 1979.

C. The Eviction Proceedings in the Municipal Court

On the same day that the ALRB hearing commenced, Rivcom filed civil complaints for unlawful detainer (Cal.

Civ. Proc. Code § 1161, et seq.) in the Ventura County Municipal Court. Additional complaints were filed the next day, March 2, 1979, and also in mid-April 1979. In total, approximately 10 complaints were filed seeking to evict 94 families from employment-related housing.

On May 11, 1979, respondent ALRB moved to intervene in each action and further moved to stay the proceedings pending a final decision of the Board. The municipal court denied the Board's motions to stay and to intervene. On April 6, 1979, the Board issued an order directing the Administrative Law Officer (ALO) who was hearing the unfair labor practice matter to expedite the proceedings. On June 13, 1979, the ALO issued his recommended order. The recommended order included a requirement that petitioner cease and desist from attempting to evict its farmworker tenants.

On July 3, 1979, respondent again requested leave of the municipal court to intervene in the pending unlawful detainer proceedings. On August 2, 1979, the court again denied the Board's request.

On August 16, 1979, the ALRB issued its decision after review of the administrative record and of the briefs submitted by the parties. The Board unanimously upheld the ALO's findings and order, and, as noted above, ordered petitioner Rivcom to cease and desist from "attempting to evict or evicting, those employees from housing at Rivcom Ranch."

On September 13, 1979, petitioner filed a petition for review of the Board's order in the Court of Appeal for the Fifth Appellate District, pursuant to California La-

bor Code section 1160.8 (Cf., 29 U.S.C. § 160(f).) The consolidated municipal court trial commenced on October 22, 1979, the defendants therein asserting an affirmative defense of retaliatory eviction and a claim that the Board's order was conclusive on the court and the parties.[1]

On October 15, 1979, respondent ALRB filed with the Court of Appeal for the Fifth Appellate District a petition for temporary relief under California Labor Code section 1160.8, seeking an order from that court temporarily restraining the municipal court eviction proceedings pending review by the appellate court of Rivcom's petition for review of the Board decision. That request was denied as premature, without prejudice to refiling in the event of an ultimate judgment in favor of the landlord.

The municipal court trial concluded on December 30, 1979, after 31 days of testimony.

On January 18, 1980, after receiving two 30-day extensions of time, petitioner Rivcom filed its brief on the merits in the proceeding in the appellate court to review the decision of the Board. Respondent ALRB filed its brief on February 21.

On January 24, 1980, the muncipal court issued a "Statement of Intended Decision" in which the court

[1] Petitioner initiated both the municipal court eviction action and the appellate court proceeding for review of the Board's order. Petitioner's apparent aim is to complete the eviction of the farmworkers through the municipal court action and thereby render the proceedings in the appellate court moot insofar as they relate to the eviction of the farmworkers.

indicated its intent to rule in favor of the landlord/employer Rivcom and against the tenants. In light of the municipal court's intent, on January 29, respondent Board filed a second request for temporary relief in the Court of Appeal; the court again denied the Board's request on February 19, 1980. However, the appellate court did order that in the event the municipal court declined on its own to stay enforcement of its judgment, enforcement thereof would be ordered stayed for a period of 10 days to enable the Board to seek relief from the California Supreme Court.

On April 24, 1980, the municipal court filed its Findings of Fact and Conclusions of Law. Judgment for plaintiff Rivcom was entered on April 26, 1980; the municipal court declined to stay enforcement of the judgment of eviction.

D. Proceedings in the California Supreme Court

Pursuant to the 10-day stay order of the appellate court, respondent ALRB initiated in the Supreme Court two proceedings to arrest the eviction of the farmworkers pending disposition on the merits of Rivcom's petition to review the decision and order of the Board. Respondent filed a petition for writ of mandate naming the appellate court as a respondent, and also filed a petition for certiorari naming the municipal court as a respondent. The former petition alleged, in substance, that the Court of Appeal had abused its discretion by refusing to grant the Board's requested temorary relief pending adjudication of the merits of Rivcom's petition to review the Board's decision and order. The action

against the municipal court alleged, in substance, that the court had acted in excess of its jurisdiction by entering a judgment of eviction in favor of Rivcom in the face of a decision of the ALRB finding the Rivcom's attempt to evict the farmworkers to be an unfair labor practice.

On July 3, 1980, the California Supreme Court denied both petitions of the ALRB (Petitioner's Appendices C and D). However, by order of the same day, the Supreme Court transferred to itself the entire proceeding to review the decision and order of the Board then pending in the Court of Appeal. Having thus acquired jurisdiction of the case, the Supreme Court issued its own stay order and, thereafter, retransferred the merits of the review proceeding to the Court of Appeal for further proceedings. (Petitioner's Appendix A.)

E. Petitioner's Contentions

Petitioner contends (1) that the sua sponte transfer of the case by the Supreme Court was outside of and in excess of the Supreme Court's jurisdicition under the California Constitution and the California Rules of Court; (2) that the stay order issued by the Supreme Court was barred by res judicata; and (3) that petitioner was entitled to a statement of reasons for the stay order. Each argument is without merit.

ARGUMENT

I

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THE PETITION SINCE THE CASE IS

ONE CONTROLLED BY STATE LAW AND PROCEDURE, AND SINCE THE CALIFORNIA SUPREME COURT WAS WELL WITHIN ITS JURISDICTION TO TRANSFER TO ITSELF THE CAUSE THEN PENDING BEFORE THE COURT OF APPEAL

The California Supreme Court's authority to transfer a case to itself is grounded in Article VI, section 12 of the California Constitution, which has long been interpreted to allow the Supreme Court to transfer to itself *any* case pending in a court of appeal without notice and without the assignment of any reason, or the existence of any reason, except the court's own discretion. (*People* v. *Davis* (1905) 147 Cal. 346, 81 P. 718; see also, Note, *California Supreme Court Review: Hearing Cases on Court's Own Motion,* 41 So.Cal.L.Rev. 749 (1968) .) Once a case is before the Supreme Court, long-settled California law (codified in section 923 of the California Code of Civil Procedure) authorizes the court to make "any order appropriate to preseve the status quo, the effectiveness of the judgment subsequently to be entered or otherwise in aid of its jurisdiction." (Cal.Civ.Proc.Code § 923; Cf., Fed.R.Civ.P. 62(g) .) The power is inherent and not dependent on statute. (See *People ex rel. S.F. Bay, Etc. Com.* v. *Town of Emeryville* (1968) 69 Cal.2d 533, 446 P.2d 790.)

Petitioner's contention that there was no jurisdiction to transfer the case because more than 60 days had passed since the Court of Appeal had issued its "decision" denying the ALRB's request for interim relief rests on the erroneous belief that the "action" by the Court

of Appeal was a "decision" within the meaning of the California Constitution and Rules of Court. California Rules of Court (Rules 20 and 28) and Article VI, section 12 of the California Constitution plainly allow transfer of an entire case (as occurred here) before decision on the merits of that case.[2] No decision on the merits of petitioner's challenge to the ALRB's unfair labor practice findings has yet issued from the Court of Appeal; hence, since there has to date been no decision or opinion within the meaning of Rule 28, the California Supreme Court was authorized to transfer the entire case to itself.

II

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THE PETITION BECAUSE THE DOCTRINE OF RES JUDICATA DOES NOT APPLY TO THE STATE SUPREME COURT'S STAY ORDER

Petitioner's contention that the state Supreme Court

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[2] Rules 28 and Article VI, section 12 may be found at petitioner's Appendices K and H. Rule 20 reads as follows: "*The transfer of causes* from the Supreme Court to a Court of Appeal, or *from a Court of Appeal to the Supreme Court*, or from one Court of Appeal to another, or from one division thereof to another, may be made only on order of the Supreme Court. The clerk of the court from which the cause is transferred shall immediately transmit to the other court the original record, briefs and all original papers and exhibits on file in the cause. If the transfer is made because the appeal is taken to the wrong court, the order may direct the appellant to pay the clerk of the court to which the cause is transferred the fee required by law for the filing of the record in the first instance. If it is so ordered and the appellant fails to pay such fee within 20 days after the mailing of the notice by the clerk that the record has been transmitted to his office and that such filing fee must be paid, the appeal may be dismissed." (Emphasis added.)

could not issue the stay order because the previous refusal by the Court of Appeal to stay the evictions precluded future stays under the doctrine of res judicata is fatally flawed. First, the Court of Appeal had acted on a request for a *stay,* which, under California law, is an interlocutory order and is not a final judgment. (*Gibson* v. *Savings and Loan Commissioner* (1970) 6 Cal.App.3d 269, 85 Cal.Rptr. 799.) Under California law, no res judicata effect is given to interlocutory orders. (*Weak* v. *Weak* (1962) 202 Cal.App.2d 632, 634, 21 Cal.Rptr. 9.) Second, the order for which res judicata effect is claimed was, by its own terms, not intended by the Court of Appeal to be final unless the municipal court refused sua sponte to stay execution of its judgment and, even then, not until the expiration of ten days thereafter. Review in the California Supreme Court was sought by the ALRB within those ten days.

III

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY PETITIONER'S CLAIM THAT IT WAS ENTITLED TO A STATEMENT OF REASONS FOR THE STATE SUPREME COURT'S ISSUANCE OF A STAY ORDER

Petitioner's claim that it was entitled to a statement of reasons for the Supreme Court's stay order is similarly controlled by state law. Under the California Constitution, Article VI, section 14, "Decisions of the Supreme Court and courts of appeal that *determine causes* shall be in writing with reasons stated." (Emphasis added.) This section has been consistently interpreted to apply

only to decisions which finally dispose of the case. (*Funeral Dir. Assn.* v. *Bd. of Funeral Dirs.* (1943) 22 Cal.2d 104, 106; 136 P.2d 785.) The stay order issued by the Supreme Court merely preserves the status quo *pending the determination of the cause,* i.e., the entire proceeding for review of the ALRB's unfair labor practice order. The final decision of the Court of Appeal in that cause will be in writing; but there is no constitutional or statutory requirement that a stay order entered pursuant to the court's inherent powers to preserve its jurisdiction must be in writing with reasons stated. (Compare this Court's action in *Central South Carolina Chapter, Society of Professional Journalists* v. *Martin* (1977) 431 U.S. 928.)

CONCLUSION

For the reason that no substantial federal question is presented by the petition for certiorari in this matter, the same should be denied.

Dated: November 5, 1980

Respectfully submitted,

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